

**International Brotherhood of Electrical Workers,  
Local 701, AFL-CIO and Federal Street Con-  
struction Co., Inc. and United States Postal  
Service, Party in Interest and American Postal  
Workers Union, AFL-CIO, Party in Interest.**  
Case 13-CD-447

March 25, 1992

**DECISION AND DETERMINATION OF  
DISPUTE**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

The charge in this Section 10(k) proceeding was filed September 26, 1991,<sup>1</sup> and amended September 27, by Federal Street Construction Co., Inc. (Federal Street), alleging that the Respondent, International Brotherhood of Electrical Workers, Local 701, AFL-CIO (Local 701), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the United States Postal Service (USPS) to assign certain work to employees it represents rather than to employees of the USPS or its contractor, Westinghouse. The hearing was held October 22, 1991, before Hearing Officer Aaron Karsh.<sup>2</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

Federal Street is a Pennsylvania corporation engaged in the business of construction, with its principal place of business in Pittsburgh, Pennsylvania, and various construction sites in Illinois. During the 12 months preceding the hearing, Federal Street and its predecessor, Mellon Stuart, purchased and received at its Illinois construction sites goods and materials valued in excess of \$50,000 from points located outside the State of Illinois, and during the same time received gross revenues in excess of \$250,000. The parties stipulated, and we find, that Federal Street is engaged in commerce within the meaning of Section 2(6) and (7) of

the Act and that Local 701 is a labor organization within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

*A. Background and Facts of Dispute*

In September 1989, the USPS contracted with Mellon Stuart Company for the construction of its Fox Valley Mail Processing Center in Aurora, Illinois. In September 1991, Federal Street succeeded Mellon Stuart and took over the construction of the Fox Valley facility. The construction contract calls for Federal Street to erect the building, prepare the worksite, and install the fixed mechanized conveyor system. Federal Street has subcontracted most of the work it is responsible for under the contract. Two of the subcontractors, Interface Electric and Fishback and Moore, have employed electricians represented by Local 701 to perform electrical work on the fixed mechanized conveyor system.

At the time of the hearing, the USPS had taken beneficial occupancy of approximately 25 percent of the Fox Valley facility. In part of the occupied area, employees of the USPS and Westinghouse began assembling and installing automated mail processing equipment, namely, two letter sorting machines (LSMs) and four bar code sorters (sorters). The LSMs are used machines that have been moved from other USPS locations to the Fox Valley facility and are installed by specialized USPS personnel called "MOTSC" teams—Maintenance Overhaul Technical Service Center. The sorters are newly purchased from Westinghouse and are installed by Westinghouse employees. The assembly and installation of this equipment is not within the scope of the construction contract between the USPS and Federal Street.

On September 19, Local 701 Business Agent Ken Lambert was summoned to the Fox Valley facility by Local 701 member Spencer Balon, an employee of a subcontractor on the job, because Balon observed USPS employees performing electrical hookup and installation work similar to that performed by electricians on other equipment.

Lambert met Federal Street Project Superintendent Dan O'Neal and told him that he had a problem with the USPS "putting their work in place, doing electricians' work." O'Neal responded that it was not Federal Street's work and that he did not have a problem with it.

That same day, Lambert called USPS Project Manager Craig Sharp and told him that the USPS employees were doing electricians' work in a construction environment. Sharp responded that the installation of the LSMs was being done in USPS-occupied space by specialized MOTSC employees who do this work all over the country. Lambert then threatened that unless something were done, the job would be shut down.

<sup>1</sup> All dates are in 1991 unless otherwise indicated.

<sup>2</sup> On October 11, 1991, the Regional Director ordered that this case be consolidated with Case 13-CD-448, in which Federal Street alleged that Plumbers and Pipefitters, Local 514, violated Sec. 8(b)(4)(D) by engaging in proscribed conduct for the purpose of forcing the USPS to assign particular work to employees it represents. Prior to the hearing, Local 514 disclaimed interest in all of the disputed work. On October 31, 1991, the Regional Director issued an order severing cases and revoking the notice of hearing in Case 13-CD-448.

On September 20, USPS Attorney Stuart Blenner called Local 701 Attorney Hugh Arnold to discuss the situation. Arnold stated that Local 701 had a problem with the work being performed by the USPS employees and asked if they were being paid the prevailing wage. Blenner replied that the MOTSC teams assemble and install the LSMs and that they are paid pursuant to a collective-bargaining agreement the USPS has with the American Postal Workers Union, AFL-CIO. Arnold replied, "I just want you to know we are not disputing the fact that they are doing the work. They are putting together those machines. But that the employees are not being paid the appropriate wages." Blenner repeated that the work has historically been performed by the MOTSC crews pursuant to their collective-bargaining agreement. Arnold then said, "Well, we can handbill. I am not disputing that the work is yours. But we can handbill and no one will report to work and we will shut the place down tighter than a drum."

On September 23, Arnold told Blenner that if the USPS did not do something, Local 701 would handbill the site, no one would go to work, and after several days, Blenner could call Arnold and perhaps then they could work something out.

Local 701 handbilled at the site on September 25 and 26.<sup>3</sup> Both days, the employees of 14 of the 16 subcontractors did not report for work.

On September 25, as O'Neal was arriving at the facility, he observed Local 701 handbillers stationed at each entrance. At gate 3, O'Neal got out of his truck to ask what was going on. Local 701 Business Agent George Iaccino told him that he understood there was a big problem inside with the Postal Service workers doing electricians' work. O'Neal got back in his truck and entered the facility.

On September 30, a meeting was held at the Fox Valley facility among representatives of the USPS, Federal Street, and Local 701. Local 701 Business Agent Stan Perry stated that because the work was being done in construction space, the USPS should assign the assembly and installation work on the LSMs and sorters to employees represented by Local 701. In

order to solve this problem, Perry proposed that the USPS reassign the hookups and final terminations on the sorters to these employees.

Pursuant to Local 701's proposal, the USPS requested bids and ultimately awarded the final hookup work on the Westinghouse sorters to employees represented by Local 701. This work was completed on September 28, 1991.

### B. Work in Dispute

All parties agree that the assembly and installation of the LSMs is part of the work in dispute. However, as to the Westinghouse sorters, Local 701 maintains that no jurisdictional dispute exists because such work was completed prior to the hearing by employees represented by Local 701 and because Westinghouse was not made a party to this proceeding. We find no merit to Local 701's contention because the Board has long held that completion of disputed work on a particular job does not moot a jurisdictional dispute when, as here, there is nothing to indicate that a similar dispute will not arise in the future. *Electrical Workers IBEW Local 581 (National Telephone)*, 223 NLRB 538, 539 (1976).

Based on the testimony presented, we find that the disputed work involves the assembly, installation, and testing of new bar code sorters and previously disassembled letter sorting machines at the Fox Valley Mail Processing Center in Aurora, Illinois. Assembling of this equipment includes machine electrical connections, mechanical assembly, building electrical hookup and testing, and incidental work.

### C. Contentions of the Parties

Federal Street<sup>4</sup> contends that there is reasonable cause to believe that Local 701 violated Section 8(b)(4)(D) of the Act by threatening to shut the facility down if the USPS did not reassign the disputed work to employees represented by Local 701, and that the Board must therefore determine the merits of the dispute. It further contends that the work in dispute should be awarded to USPS and Westinghouse employees on the basis of the USPS' preference and past practice, its collective-bargaining agreement with the American Postal Workers Union, AFL-CIO, the specialized skills of the USPS and Westinghouse employees, and economy and efficiency of operations.

Local 701 maintains that the notice of hearing must be quashed because this matter involves truthful handbilling to assure compliance with the Davis-Bacon Act, which Local 701 argues is the exclusive province of the U.S. Department of Labor. Local 701 further claims that all conversations regarding the disputed work were linked directly to Davis-Bacon area stand-

<sup>3</sup>The full text of the handbill is as follows:

STOP the U.S. Postal Service from taking construction jobs. Wiring and installation work is being done on the conveyor system at the Aurora Postal Distribution Center by Postal Workers who have not been trained by an approved A.F.L.-C.I.O., I.B.E.W. apprentice training program or training approved by State of Illinois Bureau of Apprenticeship Training and United Association of Plumbers and Pipefitters Apprenticeship standards. Postal Workers receive less than the area standard prevailing wage rate, which undercuts the buying power of the entire community. We ask for your support in our protest. Please express your concern and your support of our efforts to the staff, management and employees. We are appealing only to the public—the consumer—and are not seeking to induce any person to cease work or refuse to make deliveries.

<sup>4</sup>The USPS notified the Board that Federal Street's brief also represents the position of the USPS.

ard compliance and were not a claim for the work. Finally, Local 701 claims that, in any event, the Board does not have jurisdiction over this dispute because truthful handbilling is not subject to Board jurisdiction. On the merits, Local 701 contends that the work should be assigned to employees it represents because they possess a higher level of training, skill, and ability to perform the disputed work. Local 701 points out that, unlike the USPS employees, its members must complete a 5-year apprentice program and be licensed as electricians. Local 701 also contends that an Illinois statute requires that the work be performed by licensed electricians.

#### D. Applicability of the Statute

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

The parties stipulated that they have not agreed on a method to adjust this dispute voluntarily.

As discussed above, testimony was presented that Local 701 claimed that the USPS was doing electricians' work when it began assembling and installing the LSMs and sorters, and that something needed to be done or the job would be shut down. Stan Perry repeated Local 701's claim for the LSM and sorter work at the September 30 meeting. Finally, Blenner testified that Local 701's attorney threatened that Local 701 would shut the place down tighter than a drum if the USPS did not correct the problem.

This evidence is disputed by testimony presented by Local 701 that it did not threaten to engage in prohibited conduct or even make a demand for the work. In a 10(k) proceeding the Board is not charged with finding that a violation did in fact occur, but only that reasonable cause exists for finding a violation. Thus, a conflict in the testimony need not be resolved in order for the Board to proceed to a determination of the dispute. *Laborers Local 334 (C. H. Heist Corp.)*, 175 NLRB 608, 609 (1969). Under these circumstances, we find that Local 701's threat to shut the facility down provides reasonable cause to believe Local 701 engaged in conduct prohibited by Section 8(b)(4)(D). In so finding, we do not rely on the handbilling and the threat to handbill.<sup>5</sup>

<sup>5</sup> The hearing officer referred to the Board for a ruling Local 701's Motion for Summary Judgment and its alternative motion to exclude evidence relating to the handbilling. In support, Local 701 argues that it was engaged in truthful handbilling and that such handbilling is protected by the First Amendment and is outside the jurisdiction of the Board. Local 701 also claims that Sec. 8(c) of the Act requires a finding that the handbill cannot be used as evidence of an unfair labor practice. Because we do not rely on the handbilling and

Local 701 moved to quash the notice of hearing on the ground that the object of its conduct was to protest the USPS' failure to pay its employees the prevailing wage as required by the Davis-Bacon Act. Even assuming that one object of Local 701's conduct was to protest the USPS wage rates, we find reasonable cause to believe that another object of Local 701's conduct was to force the USPS to assign the disputed work to employees represented by Local 701. There was testimony that Local 701 claimed that the USPS was doing electricians' work, that the Local 701 claim to the LSM and sorter work was repeated at the September 30 meeting, and that Local 701's attorney threatened the USPS counsel that Local 701 would shut the place down if the USPS did not correct the problem. Because "[o]ne proscribed object is sufficient to bring a union's conduct within the ambit of Section 8(b)(4)(D)," we deny Local 701's motion to quash the hearing and find that the dispute is properly before the Board for determination.

#### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410-1411 (1962).

The following factors are relevant in making the determination of the dispute.

##### 1. Certification and collective-bargaining agreements

The USPS is party to a collective-bargaining agreement with the American Postal Workers Union, AFL-CIO, as the representative of the USPS maintenance employees, a classification that includes the MOTSC employees. MOTSC exists for the purpose of servicing, overhauling, and refurbishing USPS-owned letter sorting machines in general. Therefore, the APWU contract arguably covers the LSM work in dispute. The USPS has no contract with Local 701. Therefore, this factor favors an award of the LSM work to USPS employees.

The record does not contain evidence of any certification or collective-bargaining agreement applicable to the Westinghouse sorter work. Therefore, this factor

the threat to handbill in finding reasonable cause to believe that Local 701 violated Sec. 8(b)(4)(D), we deny Local 701's motions.

<sup>6</sup> *Cement Masons Local 577 (Rocky Mountain Prestress)*, 233 NLRB 923, 924 (1977).

favors neither Westinghouse employees nor Local 701-represented employees.

## 2. Employer preference and past practice

MOTSC General Manager Roman Sierzega testified that the USPS prefers to use its own MOTSC employees to perform the assembly and installation work on the LSM and that this has been its practice since 1969. There is no evidence that employees represented by Local 701 have ever performed this work for the USPS. USPS' preference in this regard is uniform on all its postal facility projects. Thus, we find that the factor of employer preference and past practice favors an award of the LSM work to USPS employees.

USPS Project Manager Craig Sharp testified that the USPS prefers to have the new sorters assembled and installed by Westinghouse personnel who have specialized knowledge of how the machines operate.

## 3. Area and industry practice

As the USPS is the only employer of its type in the industry, this factor does not favor any group of employees.

## 4. Relative skills

Sierzega testified that the USPS and Westinghouse employees engaged in the disputed work undergo extensive training in the operation and overhaul of the LSMs and sorters, in addition to training in industrial electricity, electronics, and computers. The MOTSC employees who work on the LSMs must complete intensive training courses so that they may attain the level of skill and proficiency required to perform the work. Each MOTSC team consists of four overhaul specialists, one electronics technician, and one supervisor. The Westinghouse personnel who assemble and install the new sorters have specialized knowledge of how the sorter operates and are responsible for its proper functioning.

Local 701 claims that employees it represents possess the necessary skill and ability to perform the final hookup and control wiring work. Local 701 states that subcontractors Fishback and Moore and Interface Electric, both using employees represented by Local 701, wired the entire facility and ran the 480-volt hard feeds to the equipment at issue. However, Federal Street Project Manager John Emser testified that Interface Electric had to train the employees represented by Local 701 to do the electrical wiring work associated with the computer control systems on the fixed mechanized conveyor system.

It appears that both groups of employees are sufficiently skilled to perform the disputed work.<sup>7</sup> There-

fore, we find that this factor does not favor any group of employees.

## 5. Economy and efficiency of operations

Sierzega testified that it is more efficient and economical to use the USPS MOTSC specialists, who are trained in the assembly of the actual machine, than it would be to employ Local 701 electricians, who must be trained in computer and electronics assembly, as well as in the overhaul and fine-tuning techniques necessary to put the LSMs in operation. The MOTSC teams are cross-trained to perform tasks associated with the assembly and installation work that are not usually performed by Local 701 electricians.

As to the sorters, the USPS has a national procurement contract with Westinghouse which includes the assembly and installation of this equipment. Westinghouse employees have specialized knowledge of how this equipment operates and can use this knowledge to complete the assembly and installation work more efficiently. If there is a defect in the sorter, Westinghouse is responsible for any repairs necessary pursuant to its contract.

Based on the testimony presented, we find that this factor favors awarding the disputed work to the USPS and Westinghouse employees.

## Conclusions

After considering all the relevant factors, we conclude that employees of the USPS and Westinghouse are entitled to perform the work in dispute. We reach this conclusion relying on the USPS' collective-bargaining agreement with the American Postal Workers Union, AFL-CIO, the USPS' preference and past practice, and economy and efficiency of operations. The determination is limited to the controversy that gave rise to this proceeding.

## DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of the United States Postal Service are entitled to perform the work of assembling and installing the letter sorting machines, and employees of Westinghouse are entitled to perform the work of assembling and installing the new sorters at the Fox Valley Mail Processing Center in Aurora, Illinois.

2. International Brotherhood of Electrical Workers, Local 701, AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the United States Postal Service to assign the disputed work to employees represented by it.

<sup>7</sup>Local 701 also contends that an Illinois statute requires that the work be performed by licensed electricians. In support, Local 701 cites Ill.Rev.Stat. Ch. 24, Par. 11-37-1, et seq., which permits any

municipality to regulate the installation, alteration, and use of electrical equipment, as well as the registration of electrical contractors. Contrary to Local 701's contention, the cited statute does not require that employees performing electrical work be licensed.

3. Within 10 days from this date, International Brotherhood of Electrical Workers, Local 701, AFL-CIO shall notify the Regional Director for Region 13 in writing whether it will refrain from forcing the

United States Postal Service, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.